IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 25119 of 2004

Between:

Boggavarapu Gokul Krishna S/o late Subba Rao, R/o Kakinada, East Godavari District

..... PETITIONER

AND

1. The Commissioner, Kakinada Municipality, Kakinada, East Godavari District.
2. Municipal Corporation of Kakinada, Kakinada, East Godavari District.

(Impleaded as per the Court order dated 06-06-2005.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issued a Writ, order or direction especially one a Writ of Mandamus declaring the inaction of the respondents in not granting the remission of property tax under Sec. 92 of the Andhra Pradesh Municipalities Act, 1965, for the premises bearing No. 42-4-1/1 for the year 1997 to 2004 as illegal and directing the respondents to grant remission for the said year.

Counsel for the Petitioner:MR.V.L.N.G.K.MURTHY

Counsel for the Respondents: MR. S.NAGESWARA REDDY

The Court made the following :

ORDER:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a *Writ* of Mandamus declaring the inaction on the part of the respondents in not granting the remission of property tax under Section 92 of the Andhra Pradesh Municipalities Act, 1965 for the premises bearing No.42-4-1/1 for the assessment years 1997 to 2004 as illegal. The petitioner also prays for issuance of a consequential direction directing the respondents to grant remission in respect of the said premises for the years 1997 to 2004.

The petitioner claims to be the true and absolute owner of the building bearing No.42-4-1/1 with assessment number 1060016772 of Kakinada Municipality. It is stated that the said godown has been vacant ever since 1997 after the tenant vacated the same. The petitioner made a representation dated 11-03-1998 addressed to the 1st respondent herein with a prayer to pass appropriate order and refund the amounts paid by him under protest. In the said representation it is clearly stated that the tenant has vacated the premises on 27-12-1996 which fact was duly intimated by the petitioner vide letter dated 11-01-1997 addressed to the 1st respondent. Having waited for the response from the 1st respondent, the petitioner got a reminder issued on 04-09-1998.

The grievance of the petitioner in the instant writ petition is that the 1st respondent herein is not entitled to levy and collect any property tax in respect of the godown bearing door Nos.42-4-1/1 and 42-6-13 situated at Commercial Road, Kakinada from the assessment years 1997-98 onwards since the premises remained vacant ever since after the tenant vacated the same. It is submitted that the 1st respondent

not only did not consider the representation so made by the petitioner but on the other hand tried to collect the property tax by using coercive methods.

This Court vide its order dated 18-01-2005 having directed notice before admission required the 1st respondent herein not to take any coercive steps as against the petitioner for realization of any property tax in respect of the said premises pending further orders. In the meanwhile, the Kakinada Municipality is formed into a Municipal Corporation. The Municipal Corporation of Kakinada represented by its Commissioner/Special Officer shall stand impleaded as the 2nd respondent in this writ petition.

The fact remains that the 1st respondent did not respond to the notice issued by this Court though it had entered its appearance through the learned Standing Counsel appearing on behalf of the Municipalities.

The only question that falls for our consideration is whether the respondents are entitled to levy and collect any property tax in respect of the premises bearing No.42-4-1/1, which according to the petitioner remained vacant ever since December 1996.

The contention is that not only the respondents cannot levy and collect any property tax but are bound to return the amounts paid by the petitioner under protest towards the property tax for the year 1997 and thereafter. The learned Standing Counsel submits that the issue as to whether the premises continues to be vacant after the tenant vacated the same in December, 1996 is required to be gone into by the respondents.

In our considered opinion no useful purpose would be served by keeping this writ petition pending since we cannot adjudicate and decide as to whether the premises which is admittedly owned by the petitioner still continues to be vacant after the same has been vacated by the tenant in the month of December, 1996. Interests of justice would be met by directing the respondents to make an appropriate enquiry

into the matter for which purpose a notice shall be issued to the petitioner and decide as to whether the premises continues to be vacant ever since the tenant vacated the same in the month of December, 1996 as alleged by the petitioner. The further question as to whether the petitioner is liable to pay any further tax or entitled to refund of the tax already paid by him would depend upon the adjudication of this particular issue. An appropriate enquiry shall be held by the 2nd respondent and the issue shall be resolved within a period of ten weeks from the date of receipt of a copy of this order. The petitioner shall be entitled to make further representation within a period of ten days from today which shall be received by the 2nd respondent-Municipal Corporation for its consideration. The petitioner shall also make available the copies of the previous representations made by him to the 1st respondent-Municipality. The petitioner shall continue to have the benefit of the interim order passed by this Court on 18-01-2005 until the matter is adjudicated by the 2nd respondent-Corporation.

The writ petition shall accordingly stand disposed of without any order as to costs.

The Municipal Corporation, Kakinada shall accordingly stand impleaded as the 2nd respondent in the writ petition.

(B.Sudershan Reddy,J)

Dated:06-06-2005

(Ramesh Ranganathan,J)

Note: Furnish certified copy on 10-06-2005.

(B/o) GJ/MSV

To

1. The Commissioner, Kakinada Municipality, Kakinada, East Godavari District.
2. Municipal Corporation of Kakinada, Kakinada, East Godavari District.
3. 2 CD copies.